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CA SB-6 deportation legal services

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SB-6 Immigrants: removal proceedings: legal services. (2017-2018)

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AMENDED IN SENATE JANUARY 24, 2017

CALIFORNIA LEGISLATURE— 2017-2018 REGULAR SESSION

SENATE BILL

No. 6

Introduced by Senator Hueso
(Principal coauthor: Senator De León)
(Coauthor: Assembly Member Rendon)

December 05, 2016

An act to amend the heading of Chapter 5.6 (commencing with Section 13300) of Part 3 of Division 9 of, and to add Sections 13307, 13308, and 13309 to, the Welfare and Institutions Code, relating to immigrants, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 6, as amended, Hueso. Immigrants: removal proceedings: legal services.

Existing law requires the State Department of Social Services, subject to the availability of funding, to contract with qualified nonprofit legal services organizations to provide legal services to unaccompanied, undocumented minors, as defined, who are transferred to the care and custody of the federal Office of Refugee Resettlement and who are present in this state. Existing law requires that the contracts awarded meet certain conditions.

This bill would require the department to either contract with qualified nonprofit legal services organizations, or contract with a nonprofit agency to administer funding to nonprofit legal services organization subcontractors, to provide legal services to ~~detained~~ individuals in removal proceedings who are not otherwise entitled to legal representation under an existing local, state, or federal program. The bill would ~~also authorize the department to award contracts to provide legal services for nondetained individual in removal proceedings if sufficient funds are appropriated for that purpose.~~ *authorize the department to prioritize the award of contracts to provide legal services to detained individuals in removal proceedings and would also authorize the department to prioritize the award of contracts to qualified nonprofit legal services organizations that also receive county or city funding to provide legal services to individuals in removal proceedings.* The bill would require the contracts awarded pursuant to this act *to* meet certain conditions. The bill would also authorize the department to contract with organizations to provide legal training and technical assistance to qualified nonprofit legal services organizations, to provide postconviction relief services to immigrants, and to provide case coordination and placement services

to ensure that all individuals in removal proceedings receive representation in a timely fashion. The bill would establish the California Universal Representation Trust Fund to accept donations from private foundations and other philanthropic entities for the purpose of expanding the number of individuals that may be provided legal services pursuant to these provisions. The bill would appropriate an unspecified sum from the General Fund to the department, and would require the department to adopt emergency regulations, for the purpose of implementing these provisions.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: yes Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This act shall be known and may be cited as the Due Process for All Act.

SEC. 2. The heading of Chapter 5.6 (commencing with Section 13300) of Part 3 of Division 9 of the Welfare and Institutions Code is amended to read:

CHAPTER 5.6. Services for Immigrants

SEC. 3. Section 13307 is added to the Welfare and Institutions Code, immediately following Section 13306, to read:

13307. (a) (1) The State Department of Social Services shall either contract directly with qualified nonprofit legal services organizations, or contract with a nonprofit agency to administer funding to nonprofit legal services organization subcontractors, to provide legal services to ~~detained~~ individuals in removal proceedings who are not otherwise entitled to legal representation under an existing local, state, or federal program. The department may ~~award~~ *prioritize the award of* contracts to provide legal services for ~~non-detained~~ *detained* individuals in removal ~~proceedings if sufficient funds are appropriated for that purpose.~~ *proceedings. The department may prioritize the award of contracts to qualified nonprofit legal services organizations that also receive county or city funding to provide legal services to individuals in removal proceedings.*

(2) By _____, the department shall request proposals for agencies to act as the umbrella agency in order to determine whether an umbrella agency model is more efficient than contracting directly with individual organizations.

(b) Funds provided under a contract awarded pursuant to this section shall not be used to provide legal services to individuals who previously have been convicted of a violent crime, as defined in subdivision (c) of Section 667.5 of the Penal Code.

~~(b)~~

(c) For purposes of this chapter, the term "individual in removal proceedings" means an individual who is in removal proceedings pursuant to Section 240 of the *federal* Immigration and Nationality Act (8 U.S.C. Sec. 1229a) before a federal immigration judge that is located in California, an individual who is arrested by Immigration and Customs Enforcement within California and placed in expedited removal proceedings, an individual who is paroled into the United States at or near a port of entry in California for purposes of removal proceedings, or an individual who is a party to an appeal made to the Board of Immigration Appeals, the United States Court of Appeals for the Ninth Circuit, or a federal ~~District Court~~ *district court* in California arising from ~~either of~~ those proceedings.

SEC. 4. Section 13308 is added to the Welfare and Institutions Code, immediately following Section 13307, to read:

13308. (a) Contracts awarded pursuant to Section 13307 shall be executed either with a nonprofit agency that will administer ~~the contract through~~ *funding to* nonprofit legal services organization subcontractors that meet both of the following requirements or directly with nonprofit legal services organizations that meet both of the following requirements:

(1) (A) Have significant experience in representing individuals in removal proceedings and asylum applications.

(B) For the purposes of this paragraph, "significant experience" means at least one of the following:

(i) A minimum of five years of experience as an organization.

(ii) Experience as a federal subcontractor for immigration representation.

(iii) Experience working with or under the supervision of an organization, including a legal training or a technical assistance organization, that has significant experience in removal defense.

(2) Are accredited by the Board of Immigration Appeals under the United States Department of Justice's Executive Office for Immigration Review or meet the requirements to receive funding from the Trust Fund Program administered by the State Bar of California.

(b) (1) The department may contract with organizations that provide legal training and technical assistance to other organizations qualified under subdivision (a).

(2) Legal services organizations that provide legal training and technical assistance shall have at least 10 years of experience conducting immigration legal services trainings and technical assistance specifically on removal defense and ~~that~~ meet the requirements as a support center to receive funding from the Trust Fund Program administered by the State Bar of California.

(3) "Legal training and technical assistance" includes, but is not limited to, webinars, in-person trainings, mentoring, removal defense boot camps, and technical assistance in the form of answering questions via email, fax, or telephone from organizations qualified under subdivision (a) and their staff and volunteers ~~that~~ **who** assist individuals with removal defense.

(c) (1) The department may contract with organizations that provide postconviction relief services to immigrants.

(2) Organizations with contracts described in this subdivision may be clean slate service providers or criminal defense organizations that will file postconviction relief motions and petitions in California's courts.

(d) The department may contract with organizations that provide case coordination and placement services to ensure that all individuals eligible for representation pursuant to a contract entered into under ~~this section~~ **Section 13307 or 13309** receive that representation in a timely fashion.

SEC. 5. Section 13309 is added to the Welfare and Institutions Code, to read:

13309. (a) The California Universal Representation Trust Fund is hereby established in the State Treasury to accept donations from private foundations and other philanthropic entities for the purpose of expanding the number of individuals ~~that~~ **who** may be provided legal services through contracts entered into by the department pursuant to Sections 13307 and 13308.

(b) Notwithstanding ~~the requirements of paragraph (1) of~~ subdivision (a) of Section 13308, the department may utilize moneys in this fund to contract with private attorneys ~~that~~ **who** are members of the American Immigration Lawyers Association for the purpose of providing legal services, if the private attorneys demonstrate that, within the past five years, ~~he or she has~~ **they have** been substantially involved in the practice of immigration and nationality law, as described in Section 2.0 and Section 3.0 of the California State Bar Standards for Certification and Recertification in Immigration and Nationality Law (as revised November 19, 2010). A private attorney does not need to be certified by the State Bar of California as a specialist in immigration and nationality law in order to qualify for a contract described in this section.

SEC. 6. The State Department of Social Services shall adopt emergency regulations implementing this act no later than _____. The department may readopt any emergency regulation authorized by this section that is the same as, or substantially equivalent to, any emergency regulation previously adopted pursuant to this section. The initial adoption of emergency regulations pursuant to this section and one readoption of emergency regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be exempt from review by the Office of Administrative Law. The initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and each shall remain in effect for no more than 180 days, by which time final regulations shall be adopted.

SEC. 7. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 8. The sum of ____ dollars (\$____) is hereby appropriated from the General Fund to the State Department of Social Services for the purposes of implementing this act.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order [to](#) ensure Californians' due process rights are protected by providing better access to counsel prior to the federal government's expected expansion of deportation policies, which will have a significant impact on California's population, it is necessary that this bill take effect immediately.